

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DUANE HATNENN,)	
)	
Claimant,)	IC 2005-000222
)	
v.)	
)	
LABOR READY, INC.,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND RECOMMENDATION
Employer,)	
)	
and)	Filed April 12, 2007
)	
INSURANCE COMPANY OF THE STATE)	
OF PA,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise on September 5, 2006. Claimant, Duane Hatnenn, was present and represented himself. Defendant Employer, Labor Ready, Inc., and Defendant Surety, Insurance Company of the State of PA, were represented by Glenna M. Christensen, of Boise. The parties presented oral and documentary evidence. This matter was then continued for the submission of briefs, and subsequently came under advisement on January 11, 2007.

ISSUES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

The issues to be resolved are:

1. Whether Claimant is entitled to temporary disability benefits while he was not working between February and July 2005; and
2. The extent of Claimant's permanent partial disability in excess of permanent impairment, if any, resulting from his industrial accident.

ARGUMENTS OF THE PARTIES

Claimant maintains that his industrial accident of December 28, 2004, resulted in permanent disability in excess of his 7% permanent impairment of the whole person. He further asserts that he is entitled to total temporary disability benefits from February until July 2005.

Defendants assert that Claimant has received adequate medical treatment for his industrial accident, has recovered with only a 7% permanent impairment (which Defendants have already paid), has no disability in excess of impairment, and is not entitled to any temporary disability benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Rick Hartley taken at hearing; and
2. Defendants' Exhibits A through J admitted at hearing.

After having considered the above evidence, and the arguments of the parties, the Referee submits the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Claimant was born in 1957. He was 49 years old at the time of the hearing. Claimant graduated from high school in Minot, North Dakota. During high school Claimant worked for

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

Minot Parks and Recreation where he performed general lawn care, landscaping, and sidewalk maintenance.

2. Following his high school graduation in 1975, Claimant drove a dump truck for two seasons during which he delivered materials to U.S. government missile sites. He earned approximately \$300 per week.

3. In 1980, Claimant graduated from Northern Arizona University with a bachelor of science in history and an associate of arts degree in sociology. He received certification as a substance abuse counselor from the University of Arizona in Tuscon. During his university studies, Claimant was a paid intern for Native Americans for Community Action where he cut firewood, poured concrete, and installed roofing.

4. After graduating from college in 1980, Claimant became the reservation programs officer for the Bureau of Indian Affairs in Lama Deer, Montana, where he primarily inventoried government property. He earned approximately \$20,000 per year.

5. In approximately 1981, Claimant was promoted to the position of executive director for the Association for Native Americans Planning Office in Lama Deer, Montana, where he supervised 24 people. His duties included planning and coordinating grants pursuant to tribal, county, and federal regulations. He earned approximately \$29,700 per year.

6. In 1982, Claimant moved to Arizona and worked full-time as a security manager for a precious metals processing plant near Cottonwood. He supervised eight people and utilized multiple electronic and visual security procedures. He earned \$8.00 per hour.

7. In 1985, Claimant moved back to North Dakota and began artistic painting. In 1986, he moved to Montana and began tutoring algebra part-time at Dull Knife Memorial College.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3

8. Claimant was not financially successful as an artist, and in 1987 he began working full-time as a bilingual education coordinator for a Bureau of Indian Affairs contract school. Claimant helped establish computer labs and enhance classroom instruction for kindergarten through 12th grades. He earned approximately \$20,000 per year.

9. From approximately 1989 through 1994, Claimant worked for a variety of nonprofit fund raising organizations including Special Olympics, Easter Seals, Jaycees, and various food banks. Claimant generally managed the direct mailing, canvassing, surveying and profiling process. He supervised up to 10 people.

10. Commencing in approximately 1994, Claimant experienced a long period of identity theft, which targeted his intellectual and artistic property and funds accruing therefrom.

11. In approximately 2000, Claimant began driving cabs, limos, and school buses. He held a CDL at the time and earned about \$250 per week. Between 2000 and 2004, Claimant worked in fund raising for nonprofit organizations and as a grant writer.

12. In December 2004, Claimant worked for Defendant Employer Labor Ready, Inc. (Labor Ready) where he was assigned to various construction and custodial projects.

13. On December 28, 2004, Claimant suffered an industrial accident while working for Labor Ready when he slipped and fell onto his left knee while carrying a roof joist over his left shoulder. The joist weighed in excess of 120 pounds. Claimant experienced an immediate wrenching and tearing sensation of his left shoulder, back, and left knee. He immediately sought medical treatment. Claimant was earning \$6.00 per hour at the time of the accident.

14. Claimant was treated by Jacob Kammer, M.D., on December 28, 2004. He diagnosed mechanical low back pain and thoracic strain. Hip and thoracic spine x-rays were normal.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

Dr. Kammer released Claimant to return to work the day of the accident with a 10-pound lifting restriction. Dr. Kammer also directed Claimant to avoid repetitive twisting, bending, or stooping, and to limit overhead reaching.

15. Claimant continued treating with Dr. Kammer and also treated with Brian Pfaff, D.C., who adjusted Claimant's left knee, ribs, and back on 12 occasions during January 2005.

16. On January 24, 2005, Claimant underwent cervical and thoracic MRI scans which disclosed slight degenerative disk disease at C3-4 through C6-7, without disk herniation, cord compression, or stenosis; and degenerative disk disease at T4-5 through T9-10, with a small left paracentral posterior disk herniation at T4-5 not impinging the spinal cord.

17. Dr. Kammer's note of February 1, 2005, records Claimant's complaints of cervical pain aggravated by his assigned work duties of sweeping and mopping. Dr. Kammer recorded that Claimant asked that his job duties be changed. Dr. Kammer told Claimant he was not a candidate to be taken off work or restricted to sedentary duty. Dr. Kammer did not believe that the light office work Claimant was requested to do should aggravate his neck. Exhibit A, p. 014. Claimant refused to sign Dr. Kammer's return to work form that day. Claimant testified that in addition to sweeping and mopping, Labor Ready required him to haul very large sacks of garbage weighing more than 10 pounds.

18. On February 5, 2005, Claimant ceased his employment with Labor Ready, indicating he could not perform the work required.

19. Claimant next saw Dr. Kammer on February 17, 2005. Claimant reported feeling better. The physical therapist's report also indicated that Claimant's pain level was significantly improved. Claimant was able then to stop all medications.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5

20. Claimant received cervical facet injections with no symptom improvement. He later underwent part of a work hardening course, received further chiropractic treatments, and acupuncture. He suffered an aggravation of symptoms in June 2005 during a session of his work hardening program. Records from the supervising physician indicate at least some of Claimant's pain complaints during the program arose from the initial muscle soreness expected when returning from a period of inactivity. Claimant's attendance and participation were problematic and he was subsequently discharged from the work hardening program for non-compliance.

21. On July 13, 2005, Claimant began working with AMCO as a parking attendant earning \$7.50 per hour.

22. In July 2005, Claimant commenced treating with James Bates, M.D., who recommended additional treatment and diagnostic testing. Claimant underwent another cervical MRI which showed minimal left neuroforaminal narrowing at C5-6, and a lumbar MRI which showed broad based disk bulge at L4-5 with evidence of an annular tear. EMG of the left upper extremity was normal. On February 9, 2006, Dr. Bates rated Claimant's permanent impairment due to the industrial accident at 7% of whole person (5% for cervical spine and 2% for the lumbar spine). Defendants paid the 7% whole person impairment rating.

23. At the time of hearing, Claimant continued to have cervical and lumbar complaints.

24. The Referee finds Claimant and Rick Hartley to be credible witnesses.

DISCUSSION AND FURTHER FINDINGS

25. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leave no room for narrow, technical construction.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 6

Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

26. **Total temporary disability.** Claimant alleges entitlement to total temporary disability benefits for a period of approximately five months from February 5, 2005, when he ceased working at Labor Ready, until July 13, 2005, when he commenced working at AMCO.

27. Idaho Code § 72-102 (10) defines “disability,” for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees “during the period of recovery.” The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability.

Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980). Furthermore:

[O]nce a claimant establishes by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to total temporary disability benefits unless and until evidence is presented that he has been medically released for light work *and* that (1) his former employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery *or* that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his light duty work release.

Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986) (emphasis in original).

28. Claimant herein has not provided any medical evidence that he was unable to perform light-duty work during the period from February 5, 2005, until July 13, 2005. However, Claimant provided un rebutted testimony that some of the work which Labor Ready regularly required of him

after his accident was not in accord with his light-duty medical restrictions.

29. After Claimant's accident, Dr. Kammer released him to light-duty work with lifting of no more than 10 pounds. While Claimant was restricted to light-duty work, Labor Ready required him to haul large sacks of garbage, mop, and sweep parking lots. He was involved every day in a significant amount of cleaning, including taking out garbage. Wet mops and large sacks of garbage weighed more than 10 pounds and Claimant experienced increasing symptoms in attempting to perform his assigned tasks until he could no longer complete them. Claimant testified that he was forced to cease his assigned work by approximately February 5, 2005, because of the resulting increased symptoms.

30. Dr. Kammer's note of February 1, 2005, corroborates Claimant's testimony that his cervical pain was aggravated by his assigned work duties, specifically that sweeping and mopping were aggravating his symptoms. Dr. Kammer also recorded that Claimant asked that his job duties be changed, but that Dr. Kammer did not believe that the light office work Claimant was requested to perform should aggravate his neck. Significantly, Claimant refused to sign the return to work form that day. It appears Dr. Kammer was not fully aware of Labor Ready's work assignments to Claimant while he was restricted to light-duty. Claimant's testimony finds some further circumstantial support in Dr. Kammer's note of February 17, 2005, in which Claimant reported significant improvement in his pain level. On that date Claimant was able to discontinue all medications. This improvement followed a 12-day respite from hauling very large sacks of garbage that exceeded Claimant's lifting restrictions. The physical therapy notes from the same period further corroborate Claimant's improvement.

31. The Referee finds that Labor Ready failed to provide Claimant suitable light-duty

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 8

work within the 10 pound lifting restriction imposed by Dr. Kammer.

32. Claimant continued to treat with Dr. Kammer, who restricted him to light-duty work through February 24, 2005. The return to work form which Dr. Kammer completed on that day did not specify an end date for Claimant's light-duty work restrictions. Claimant subsequently received facet injections from Sandra Thompson, M.D. Her notes of April 4 and 28, 2005, indicate Claimant was still on medical leave and off work. Thereafter, Claimant received chiropractic and acupuncture treatments by David Price, D.C., in May and June 2005. Claimant commenced a work hardening program by June 6, 2005. Claimant experienced an exacerbation of his symptoms during one session of his work hardening exercises and he ceased participating in the program. He was discharged from the program on June 14, 2005, for non-compliance after the physical therapist expressly advised him that leaving the program that day would result in discharge. Claimant continued to receive medical treatment through July 13, 2005, when he commenced work for AMCO.

33. The Referee concludes that Claimant was within the period of recovery from his industrial accident from February until July 2005, and that Labor Ready failed to provide Claimant suitable work under the terms of his light duty restrictions. The fact that Claimant ceased his employment with Labor Ready on February 5, 2005, is of no consequence given that the work offered by Labor Ready exceeded Claimant's medical restrictions.

34. Claimant has proven his entitlement to temporary disability benefits for the period from February 5, 2005, until July 13, 2005.

35. **Permanent Disability.** "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because

of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant.

36. The degree of permanent disability suffered by a claimant is a factual question committed to the particular expertise of the Commission. McClurg v. Yanke Machine Shop, Inc., 123 Idaho 174, 176, 845 P.2d 1207, 1209 (1993). Wage loss may be a factor. Baldner v. Bennett's Inc., 103 Idaho 458, 649 P.2d 1214 (1982). The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant's capacity for gainful employment." Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

37. In the present case, Claimant was earning \$6.00 per hour at the time of his industrial

accident. He had been earning \$7.50 per hour at AMCO shortly prior to hearing.

38. Dr. Bates restricted Claimant to lifting a maximum of 35 pounds, 25 pounds frequently, and 5 pounds at or above shoulder level. Dr. Bates also permanently restricted Claimant from sitting more than one hour at a time.

39. Industrial Commission rehabilitation consultant Rick Hartley testified that Claimant has an education and experience level to perform many types of jobs. Hartley testified that Claimant is qualified to do most anything. He testified that Claimant interviewed and was a strong candidate for a self-reliance specialist position with the Idaho Department of Health and Welfare. Claimant also interviewed for the Salmon city manager position. Hartley specifically opined that among other positions, Claimant could work as a telemarketer, city planner, housing manager, parking attendant, security officer, juvenile case worker, distributor driver, developmental specialist, and light duty salesperson. Hartley testified that Claimant was very diligent in his job searching and that Claimant apparently took the AMCO parking attendant job to tide him over while he searched for higher paying jobs which are available periodically.

40. Based on Claimant's impairment rating of 7% of the whole person, and his various medical and non-medical factors, Claimant's ability to engage in gainful activity has been reduced. However, Claimant has excellent transferable skills and extensive prior experience in many areas not precluded by his physical impairment. Claimant's permanent physical restrictions from his industrial injury have little actual impact on his wage earning capacity and his actual ability to engage in gainful employment.

41. Claimant has not established his entitlement to any permanent disability in excess of his permanent impairment.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 11

CONCLUSIONS OF LAW

1. Claimant has proven his entitlement to temporary total disability benefits from February 5, 2005, until July 13, 2005.
2. Claimant has not proven he suffers any permanent disability due to his industrial injury in excess of his 7% permanent impairment.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own, and issue an appropriate final order.

DATED this 30th day of March, 2007.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2007, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

DUANE HATNENN
4210 W STATE STREET #18
BOISE ID 83703

DUANE HATNENN
GENERAL DELIVERY
COTTONWOOD CA 96022-9999

GLENNA M CHRISTENSEN
PO BOX 829
BOISE ID 83701-0829

lbs

/s/

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ARGUMENTS OF THE PARTIES

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EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Rick Hartley taken at hearing; and
2. Defendants' Exhibits A through J admitted at hearing.

After having considered the above evidence, and the arguments of the parties, the Referee submits the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

Minot Parks and Recreation where he performed general lawn care, landscaping, and sidewalk maintenance.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3

8. Claimant was not financially successful as an artist, and in 1987 he began working full-time as a bilingual education coordinator for a Bureau of Indian Affairs contract school. Claimant helped establish computer labs and enhance classroom instruction for kindergarten through 12th grades. He earned approximately \$20,000 per year.

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Dr. Kammer released Claimant to return to work the day of the accident with a 10-pound lifting restriction. Dr. Kammer also directed Claimant to avoid repetitive twisting, bending, or stooping, and to limit overhead reaching.

15. Claimant continued treating with Dr. Kammer and also treated with Brian Pfaff, D.C., who adjusted Claimant's left knee, ribs, and back on 12 occasions during January 2005.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 5

20. Claimant received cervical facet injections with no symptom improvement. He later underwent part of a work hardening course, received further chiropractic treatments, and acupuncture. He suffered an aggravation of symptoms in June 2005 during a session of his work hardening program. Records from the supervising physician indicate at least some of Claimant's pain complaints during the program arose from the initial muscle soreness expected when returning from a period of inactivity. Claimant's attendance and participation were problematic and he was subsequently discharged from the work hardening program for non-compliance.

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DISCUSSION AND FURTHER FINDINGS

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 6

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after his accident was not in accord with his light-duty medical restrictions.

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31. The Referee finds that Labor Ready failed to provide Claimant suitable light-duty

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work within the 10 pound lifting restriction imposed by Dr. Kammer.

32. Claimant continued to treat with Dr. Kammer, who restricted him to light-duty work through February 24, 2005. The return to work form which Dr. Kammer completed on that day did not specify an end date for Claimant's light-duty work restrictions. Claimant subsequently received facet injections from Sandra Thompson, M.D. Her notes of April 4 and 28, 2005, indicate Claimant was still on medical leave and off work. Thereafter, Claimant received chiropractic and acupuncture treatments by David Price, D.C., in May and June 2005. Claimant commenced a work hardening program by June 6, 2005. Claimant experienced an exacerbation of his symptoms during one session of his work hardening exercises and he ceased participating in the program. He was discharged from the program on June 14, 2005, for non-compliance after the physical therapist expressly advised him that leaving the program that day would result in discharge. Claimant continued to receive medical treatment through July 13, 2005, when he commenced work for AMCO.

33. The Referee concludes that Claimant was within the period of recovery from his industrial accident from February until July 2005, and that Labor Ready failed to provide Claimant suitable work under the terms of his light duty restrictions. The fact that Claimant ceased his employment with Labor Ready on February 5, 2005, is of no consequence given that the work offered by Labor Ready exceeded Claimant's medical restrictions.

34. Claimant has proven his entitlement to temporary disability benefits for the period from February 5, 2005, until July 13, 2005.

35. **Permanent Disability.** "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because

of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant.

36. The degree of permanent disability suffered by a claimant is a factual question committed to the particular expertise of the Commission. McClurg v. Yanke Machine Shop, Inc., 123 Idaho 174, 176, 845 P.2d 1207, 1209 (1993). Wage loss may be a factor. Baldner v. Bennett's Inc., 103 Idaho 458, 649 P.2d 1214 (1982). The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant's capacity for gainful employment." Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

37. In the present case, Claimant was earning \$6.00 per hour at the time of his industrial

accident. He had been earning \$7.50 per hour at AMCO shortly prior to hearing.

38. Dr. Bates restricted Claimant to lifting a maximum of 35 pounds, 25 pounds frequently, and 5 pounds at or above shoulder level. Dr. Bates also permanently restricted Claimant from sitting more than one hour at a time.

39. Industrial Commission rehabilitation consultant Rick Hartley testified that Claimant has an education and experience level to perform many types of jobs. Hartley testified that Claimant is qualified to do most anything. He testified that Claimant interviewed and was a strong candidate for a self-reliance specialist position with the Idaho Department of Health and Welfare. Claimant also interviewed for the Salmon city manager position. Hartley specifically opined that among other positions, Claimant could work as a telemarketer, city planner, housing manager, parking attendant, security officer, juvenile case worker, distributor driver, developmental specialist, and light duty salesperson. Hartley testified that Claimant was very diligent in his job searching and that Claimant apparently took the AMCO parking attendant job to tide him over while he searched for higher paying jobs which are available periodically.

40. Based on Claimant's impairment rating of 7% of the whole person, and his various medical and non-medical factors, Claimant's ability to engage in gainful activity has been reduced. However, Claimant has excellent transferable skills and extensive prior experience in many areas not precluded by his physical impairment. Claimant's permanent physical restrictions from his industrial injury have little actual impact on his wage earning capacity and his actual ability to engage in gainful employment.

41. Claimant has not established his entitlement to any permanent disability in excess of his permanent impairment.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 11

CONCLUSIONS OF LAW

1. Claimant has proven his entitlement to temporary total disability benefits from February 5, 2005, until July 13, 2005.
2. Claimant has not proven he suffers any permanent disability due to his industrial injury in excess of his 7% permanent impairment.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own, and issue an appropriate final order.

DATED this 30th day of March, 2007.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2007, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

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/s/